



असाधारण
EXTRAORDINARY
भाग II—खण्ड 2
PART II—Section 2
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 39] नई दिल्ली, शुक्रवार, नवम्बर 18, 1983/कार्तिक 27, 1905
No. 39] NEW DELHI, FRIDAY, NOVEMBER 18, 1983/KARTIKA 27, 1905

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation

LOK SABHA

The following Bills were introduced in Lok Sabha on the 18th November, 1983:—

BILL No. 96 OF 1983

A Bill to provide for exercising effective control over habitual criminals and to ensure expeditious punishment of criminals with a view to reducing the number of cases pending in courts.

Be it enacted by Parliament in the Thirty-fourth Year of the Republic of India as follows:—

1. (1). This Act may be called the Prevention of Crime Act, 1983.

(2) It extends to whole of India.

(3) It shall come into force at once.

Short
title,
extent
and com-
mence-
ment.

2. (1) There shall be appointed a special Magistrate for each police station.

(2) The court of a special Magistrate shall be termed as a Special Court.

Appoint-
ment of
special
Magistra-
tes as
Special
Courts.

Special
Magis-
trate to
award
punish-
ment.

3. The special Magistrate shall be competent to award punishment to the offenders caught redhanded by any watchman, police personnel or caught on the basis of a first information report lodged with the police.

Powers
of
special
Magis-
trates.

4. The special Magistrate shall act as an Executive Officer and shall have the power to award punishment in cases for which a fine upto rupees two thousand five hundred and/or imprisonment upto three months can be awarded under the Indian Penal Code after collecting necessary evidence or examining the accused persons brought to the police station and recording the evidence of the complainants and witnesses

45 of 1860.

STATEMENT OF OBJECTS AND REASONS

At present 5000 to 25000 cases are pending in lower courts, Sub-Divisional Courts, District Courts, High Courts and the Supreme Court from 5 to 10 years and some of the cases are pending for 15 to 20 years. This results in acquittal of culprits and causes unbearable sufferings to the complainants. In the name of "wrong ingredients" of law, the innocent people get punishment while actual culprits are acquitted. During the long period of pendency of the cases, the witnesses resile from their earlier statements under threats given by the criminals. Thus justice become costly and the law turns out to be blind.

Under the provisions of the proposed Bill, the police personnel of the concerned police station will expeditiously investigate the case and hand over the accused persons to the special Magistrate. The notion 'justice delayed is justice denied' will be removed by the implementation of the provisions of the Bill. Moreover, the number of Habeas Corpus petitions to High Courts or Supreme Court will be minimised. As soon as the police apprehends the culprit, they will produce him before the special Court and the judicial proceedings in the matter will start immediately.

Hence this Bill.

NEW DELHI;
July 15, 1983.

R. L. P. VERMA

FINANCIAL MEMORANDUM

Clause 2 of the Bill provides for the appointment of a special Magistrate for each police station. The Bill, therefore, if enacted, will involve expenditure from the Consolidated Fund of India. It is likely to involve a recurring expenditure of about rupees fifty lakhs per annum.

A non-recurring expenditure of about rupees two lakhs is also likely to be involved.

BILL NO. 97 OF 1983

A Bill further to amend the Representation of the People Act, 1950.

BE it enacted by Parliament in the Thirty-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Representation of the People (Amendment) Act, 1983.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Short
title,
extent and
com-
mence-
ment.

43 of 1950.

2. After section 16 of the Representation of the People Act, 1950, the following section shall be inserted, namely:—

Insertion
of new
section
16A.

“16A. (1) It shall be compulsory for every citizen of India, having a right to vote, to vote at an election to the House of the People, Legislative Assembly of the State or Panchayat held in the constituency in which he is enrolled for the time being.

Compul-
sory
exercise
of right
to vote.

(2) If a person does not vote at an election to the House of the People, Legislative Assembly of the State or Panchayat, an explanation shall be called from him by the electoral registration officer as to why his name should not be removed from the electoral rolls and if it is proved that he was present in the city/town/village at the time of election and did not exercise his right to vote deliberately, his name shall be removed from the electoral rolls and such action, as may be deemed necessary, shall be taken to deprive him of his civil rights.

(3) If a person does not vote in two successive elections to the House of the People, Legislative Assembly of the State or Panchayat, he shall stand disqualified for contesting any election and if he or his dependant children are entitled to any benefit of reservation in Government services, they shall not be given that benefit.

(4) Any person, who obstructs a voter from exercising his right to vote by intimidating or terrorising him, shall be punished with rigorous imprisonment for six months and shall also be liable to a fine upto rupees one thousand which shall be paid to the person deprived of his right to vote."

STATEMENT OF OBJECTS AND REASONS

Even after lapse of 36 years since independence, the citizens of our country are oblivious and unconscious of their democratic rights and obligations. Only 35 per cent to 45 per cent voters exercise their franchise. Voters do not feel the necessity of going to the election booths and casting their votes. Unless they are aware of the consequences of not voting at elections, any amount of canvassing, publicity, speeches, allurements and requests would have no effect on them. As a consequence of voters' apathy, anti-social elements spread terror and indulge in booth capturing, looting and violence.

There are certain loopholes in the election laws and procedures. Certain committees were set up to suggest remedial and reformatory measures. But bogus and illegal voting is still taking place everywhere. Unless voting is made compulsory, there cannot be improvement in the voting system. It is, therefore, necessary to codify the above suggestions in order to ensure free and fair elections and cent per cent voting in elections.

Hence this Bill.

NEW DELHI;

R. L. P. VERMA

July 15, 1983.

BILL No. 110 OF 1983

A Bill further to amend the Salary, Allowances and Pension of Members of Parliament Act, 1954.

BE it enacted by Parliament in the Thirty-fourth Year of the Republic of India as follows:—

Short
title.

1. This Act may be called the Salary, Allowances and Pension of Members of Parliament (Amendment) Act, 1983.

Amend-
ment of
section
8A.

2. In section 8A of the Salary, Allowances and Pension of Members of Parliament Act, 1954 (hereinafter referred to as the principal Act), in sub-section (1),—

39 of 1954.

(i) for the words “three hundred rupees”, wherever they occur, the words “five hundred rupees” shall be substituted;

(ii) in the second proviso, for the words “five hundred rupees” the words “seven hundred rupees” shall be substituted;

(iii) after the existing provisos, the following provisos shall be inserted, namely:—

“Provided further that in case of dissolution of the House of the People, earlier than the period of five years, the period already served shall be deemed to be equivalent to five years:

Provided further that in the case of every person who has served in the body which functioned as the Constituent Assembly of the Dominion of India immediately before the commencement of the Constitution, the period served by him in such body shall be deemed to be equivalent to five years.”

3. After section 8A of the principal Act, the following section shall be inserted, namely:—

Insertion
of new
section
8B.

“8B. Every person, who has served as a member of the House of the People or the Council of States, for a period of five years, shall be entitled to—

Provi-
sion of
facili-
ties to
ex-mem-
bers of
Parlia-
ment.

(i) free travel by rail in first class; and

(ii) accommodation, for short duration, in guest houses of public undertakings, hostels, circuit houses, rest houses, dak bungalows or any other kind of accommodation in which facilities are available for Group ‘A’ officers of the Central Government or members of Parliament, at concessional rent or charges:

Provided that in the case of persons who were members of the House of the People, which was dissolved earlier than the period of five years, the period already served by such persons as members of that House shall be deemed to be equivalent to five years.”

STATEMENT OF OBJECTS AND REASONS

Provision of certain additional facilities and amenities to persons, who have served as representatives of the people and are of proven worth in the fields of social work and service of the nation in various capacities, has become desirable in view of the changing economic conditions in the country. Even after such persons cease to be Members of Parliament they continue to serve the country and because of their social and political involvement, which is almost as much as that of a sitting member, their economic needs are considerable. As their activities in the public field are advantageous to the people they deserve relief.

Hence this Bill.

NEW DELHI;
August 3, 1983.

DOONGAR SINGH

FINANCIAL MEMORANDUM

Clause 2(i) of the Bill provides for payment of pension of five hundred rupees per mensem instead of three hundred rupees per mensem to ex-members. Clause 2(ii) provides for raising the total amount of pension payable to an ex-member to rupees seven hundred from rupees five hundred per mensem. Clause 2(iii) provides that if the House of the People is dissolved earlier than the period of five years, the members of the dissolved House shall be entitled to receive pension. It also provides that all members of the Constituent Assembly of the Dominion of India shall be entitled to receive pension. Clause 3 provides that all ex-members of Parliament who served as a member of either House of Parliament for a period of five years shall be entitled to travel free by rail in first class and shall be entitled to stay for short durations in guest houses of public undertakings, hostels, etc. at concessional rent or charges. The Bill, therefore, if enacted, will involve expenditure from the Consolidated Fund of India. It is likely to involve a recurring expenditure of about rupees five lakhs per annum.

No non-recurring expenditure is likely to be involved.

BILL No. 107 OF 1983

A Bill to provide for the appointment of a Lokpal to inquire into allegations of misconduct against public men and public servants and for matters connected therewith.

BE it enacted by Parliament in the Thirty-fourth Year of the Republic of India as follows:—

PRELIMINARY

Short
title, ex-
tent and
com-
mence-
ment.

1. (1) This Act may be called the Lokpal Act, 1983.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Defini-
tions.

2. (1) In this Act, unless the context otherwise requires,—

(a) "competent authority", in relation to a complaint against a public man, means the competent authority in relation to such complaint determined in accordance with the provisions of subsection (2) and the rules made thereunder;

(b) "complaint" means a complaint alleging that a public man has, while holding any of the offices referred to in clause (h), committed misconduct;

(c) "complaint against a legislator" means a complaint alleging misconduct by a person who, at the time of the alleged commission of such misconduct was a Member of Parliament without being a member of the Council of Ministers for the Union or a Member of the Legislative Assembly of a State or a Union territory without being a member of the Council of Ministers for such State or Union territory.

(d) "corruption" means and includes—

(i) any act punishable under Chapter IX of the Indian Penal Code or the Prevention of Corruption Act, 1947;

(ii) abetment of any of the acts mentioned in sub-clause (i);

(iii) intentional concealment of acts mentioned in sub-clauses (i) and (ii) by any other public man; and

(iv) any conduct which in the opinion of the Lokpal does not conform to the standards of fairness of integrity reasonably expected of the public man concerned in his character as a public man;

Explanation—Acts or conduct amounting to corruption shall be such whether committed before or after the coming into force of this Act.

(e) "Lokpal" means a person appointed under section 4 as the Lokpal and, where a Special Lokpal is appointed under section 8 for exercising jurisdiction in relation to any complaints or any class, of complaints, includes for the purpose of such complaints or classes of complaints, such Special Lokpal;

(f) "misconduct" means misconduct (whether committed before or after the commencement of this Act or within or outside India) of the nature specified in section 3;

(g) "prescribed" means prescribed by rules made under this Act;

(h) "public man" means a person who holds or has held the office of—

(i) a member (including a Deputy Minister) of the Council of Ministers for the Union;

(ii) a member of either House of Parliament;

(iii) a member (including a Deputy Minister) of the Council of Ministers for a Union territory;

(iv) a member of the Legislative Assembly for any Union territory;

(v) a member of the Executive Council under the Delhi Administration Act, 1966;

45 of 1960,
2 of 1947.

19 of 1966

(vi) the Mayor of a Municipal Corporation in any Union territory;

(i) "public servant" shall have the same meaning as in section 21 of the Indian Penal Code.

45 of 1860.

(2) The competent authority in relation to a complaint under this Act shall be determined in accordance with the provisions of the Table below with reference to the office held by the public man against whom such complaint is made at the time of commission of the misconduct alleged to have been committed by such public man:

Provided that where during the period in which any misconduct is alleged to have been committed by a person in a complaint, and such public man holds different offices successively, the competent authority shall be determined with reference to the last office held by him during that period.

THE TABLE

Sl. No.	office	Competent authority
1.	Prime Minister	The Speaker of the House of the People.
2.	Any other Member (including a Deputy Minister) of the Council of Ministers for the Union.	Joint Committee of the two Houses of Parliament entrusted with powers to make recommendations of penalties on similar other measures to the appropriate executive authority.
3.	Member of Parliament who is not a Member of the Council of Ministers for the Union.	The Chairman of the Council of States in the case of a Member of that Council and Speaker of the House of the People in the case of a Member of that House and, where the complaint is against such Speaker, the Deputy Speaker of the House of the People.
4.	Chief Minister of a State or Union territory.	Joint Committee of the two Houses of Legislature/Legislative Assembly, as the case may be, with powers to make recommendations of penalties on similar other measures to the appropriate executive authority.
5.	Member of the Legislative Assembly for any Union territory who is not a member of the Council of Ministers for the Union territory.	The Speaker of the Legislative Assembly and where the complaint is against such Speaker, the Deputy Speaker of the Legislative Assembly.
6.	Any other office.	Such Authority as may be prescribed.

Misconduct by a public man.

3. (1) A public man, other than a legislator, commits misconduct—

(a) if he is actuated in the discharge of his functions as such public man by corrupt motives; or

(b) if he abuses, or attempts to abuse, or knowingly allows to be abused, his position as such public man for securing for himself

or for any of his relatives or associates, directly or indirectly, any valuable thing or pecuniary advantage; or

(c) if any act or omission by him constitutes corruption.

(2) A legislator commits misconduct if he abuses, or attempts to abuse, or knowingly allows to be abused, his position as such legislator for securing for himself or for any of his relatives or associates, directly or indirectly, any valuable thing or pecuniary advantage.

(3) A public man who abets, or conceals or attempts to conceal from detection, the commission of misconduct of the nature specified in sub-section (1) or sub-section (2), also commits misconduct.

Explanation.—For the purposes of this section,—

(a) “associate” in relation to a public man includes any person in whom such public man is interested;

(b) “legislator” means a person who is Member of Parliament without being a member of the Council of Ministers for the Union or a Member of the Legislative Assembly for a Union territory without being a member of the Council of Ministers for such Union territory;

(c) a person shall be deemed to be relative of another if, and only if,—

(a) they are member of a Hindu undivided family; or

(b) they are husband and wife; or

(c) the one is related to the other in the manner indicated below:—

1. Father.

2. Mother (including step-mother).

3. Son (including step-son).

4. Son's wife.

5. Daughter (including step-daughter).

6. Son's son.

7. Son's daughter.

8. Daughter's husband.

9. Daughter's son.

10. Brother (including step-brother).

11. Sister (including step-sister).

MACHINERY FOR INQUIRIES

4. (1) For the purpose of making inquiries in respect of complaints under this Act, the President shall, after consultation with the Chief Justice of India, the Chairman of the Council of States and the Speaker

Appoint-
ment of
Lokpal.

of the House of the People, appoint, by warrant under his hand and seal, a person to be known as the Lokpal:

Provided that, before expressing his views, the Chairman of the Council of States or the Speaker of the House of the People may consult the leaders of the various Parties and Groups in the Council of States or, as the case may be, the House of the People.

(2) Every person appointed as the Lokpal shall, before entering upon his office, make and subscribe before the President, or some person appointed in that behalf by the President, on oath or affirmation in the form set out in the Schedule.

**Lokpal
to be
ineligible
to hold
other
offices.**

5. The Lokpal shall not be a Member of Parliament or a Member of the Legislature of any State and shall not hold any office of trust or profit (other than his office as Lokpal), or be connected with any political party, or carry on any business, or practise any profession, and accordingly, before he enters upon his office, a person appointed as the Lokpal shall,—

(a) if he is a Member of Parliament or of the Legislature of any State, resign such membership; or

(b) if he holds any office of trust or profit, resign from such office; or

(c) if he is connected with any political party, sever his connection with it; or

(d) if he is carrying on any business, sever his connection (short of divesting himself of ownership) with the conduct and management of such business; or

(e) if he is practising any profession, cease to practise such profession.

**Term of
office and
other
condi-
tions of
service of
Lokpal.**

6. (1) A person appointed as the Lokpal shall hold office for a term of five years from the date on which he enters upon his office:

Provided that—

(a) the Lokpal may, by writing under his hand addressed to the President, resign his office;

(b) the Lokpal may be removed from his office in the manner provided in section 7.

(2) On ceasing to hold office, the Lokpal shall be ineligible for further employment to any office of profit under the Government of India or the Government of a State.

(3) There shall be paid to the Lokpal in respect of time spent on actual service salary at the rate of five thousand rupees per mensem:

Provided that if the Lokpal is, at the time of his appointment, in receipt of a pension (other than a disability pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of service as the Lokpal shall be reduced—

(a) by the amount of that pension; and

(b) if he has, before such appointment, received, in lieu of a portion of the pension due to him in respect of such previous service, the commuted value thereof, by the amount of that portion of the pension; and

(c) if he has, before such appointment, received a retirement gratuity in respect of such previous service, by equivalent of that gratuity.

(4) The Lokpal shall be entitled without payment of rent to the use of an official residence.

(5) The allowances and pension payable to, and other conditions of service of, the Lokpal shall be such as may be determined by the President having regard to the allowance and pension payable to, and other conditions of service of, the Chief Justice of India:

Provided that the allowances and pension payable to, and other conditions of service of, the Lokpal shall not be varied to his disadvantage after his appointment.

7. (1) The Lokpal shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

Removal
of Lokpal.

(2) The procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of the Lokpal under sub-section (1) shall be as provided in the Judges (Inquiry) Act, 1968, in relation to the removal of a Judge and, accordingly, the provision of that Act shall, subject to necessary modifications, apply in relation to the removal of the Lokpal as they apply in relation to the removal of a Judge.

51 of 1968.

8. (1) Notwithstanding anything contained in section 4, if the President is satisfied on a report from the Lokpal that it is necessary so to do for the expeditious disposal of complaints under this Act, he may, after consultation with the Chief Justice of India, the Chairman of the Council of States and the Speaker of the House of the People, appoint, by warrant under his hand and seal, one or more persons to be a Special Lokpal or Special Lokpals for exercising jurisdiction in relation to such complaints or such classes of complaints under this Act as may be specified in the warrant:

Special
Lokpals.

Provided that, before expressing his views, the Chairman of the Council of States or the Speaker of the House of the People may consult the leaders of the various Parties and Groups in the Council of States or, as the case may be, the House of the People.

(2) A Special Lokpal shall hold office for a term of five years or for such shorter term as may be specified in the warrant of his appointment and a Special Lokpal appointed for a term of less than five years shall be eligible for reappointment:

Provided that the total period for which a person may hold the office of Special Lokpal shall in no case exceed five years.

(3) Save as otherwise expressly provided in this Act, the provisions of this Act relating to the Lokpal, including the provisions relating to the oath or affirmation to be made by the Lokpal, the ineligibility of the Lokpal to hold other offices, the conditions of service of the Lokpal and removal of the Lokpal, the functions, powers and duties of the Lokpal, shall apply in relation to a Special Lokpal as they apply in relation to the Lokpal but nothing in this sub-section shall be construed to enable a Special Lokpal to exercise jurisdiction in relation to any complaint or class of complaints not specified in the warrant by which he was appointed.

Staff of
Lokpal.

9. (1) The Lokpal shall appoint a Secretary and such other officers and employees as may be prescribed to assist him in the discharge of his functions (including verification and inquiries in respect of complaints) under this Act.

(2) Without prejudice to the provisions of sub-section (1), the Lokpal may, for the purpose of dealing with any complaints or any classes of complaints, secure—

(i) the services of any officer or employee or investigating agency of the Central Government or a State Government with the concurrence of that Government; or

(ii) the services of any other person or agency.

(3) The terms and conditions of service of the officers and employees referred to in sub-section (1) and of the officers, employees, agencies and persons referred to in sub-section (2) (including such special conditions as may be considered necessary for enabling them to act without fear in the discharge of their functions) shall be such as may be prescribed in consultation with the Lokpal.

(4) In the discharge of their functions under this Act, the officers and employees referred to in sub-section (1) and the officers, employees, agencies and persons referred to in sub-section (2) shall be subject to the exclusive administrative control and direction of the Lokpal.

(5) The officers and employees referred to in sub-section (1) and the officers, employees, agencies and persons referred to in sub-section (2) shall also assist the Special Lokpals (if any) in the discharge of their functions.

JURISDICTION AND PROCEDURE IN RESPECT OF INQUIRIES

Jurisdic-
tion of
Lokpal.

10. (1) Subject to the other provisions of this Act, the Lokpal may inquire into any matter involved in, arising from, or connected with, any allegation of misconduct against a public man made in a complaint under this Act.

(2) The Lokpal may inquire into any act or conduct of any person other than a public man in so far as he considers it necessary so to do for the purpose of his inquiry into any allegation of misconduct against a public man:

Provided that the Lokpal shall give such person a reasonable opportunity of being heard and to produce evidence in his defence.

60 of 1952.

(3) No matter in respect of which a complaint may be made under this Act shall be referred for inquiry under the Commission of Inquiry Act, 1952, except on the recommendation or with the concurrence of the Lokpal.

11. (1) The Lokpal shall not inquire into any matter concerning any person if he has any bias in respect of such matter or person and if any dispute arises in this behalf, the President shall, on an application made by the party aggrieved obtain, in such manner as may be prescribed, the opinion of the Chief Justice of India and decide the dispute in conformity with such opinion.

Matters
not
subject
to juris-
diction
of Lokpal.

60 of 1952.

(2) The Lokpal shall not inquire into any matter which has been referred for inquiry under the Commission of Inquiry Act, 1952, on his recommendation or with his prior concurrence.

(3) The Lokpal shall not inquire into any allegation of misconduct against a public man if the complaint in respect thereof is made after the expiry of five years from the date on which the misconduct is alleged to have been committed:

Provided that the Lokpal may entertain such a complaint if the complainant satisfies him that he had sufficient cause for not making the complaint within the said period of five years.

12. (1) Any person other than a public servant may make a complaint under this Act to the Lokpal.

Com-
plaints.

Explanation.—For the purposes of this sub-section public servant means,—

(a) any person who is a member of Defence service or of a civil service of the Union or a State or of an all-India service or holds any post connected with Defence or any civil post under the Union or a State;

1 of 1956.

(b) any person in the service or pay of a local authority a corporation established by or under a Central or State Act or a Government company, as defined in section 617 of the Companies Act, 1956.

20 of 1963.

(2) Notwithstanding anything contained in sub-section (1), a complaint against a legislator shall be made to the competent authority (hereinafter in this section referred to as the appropriate authority) concerned and that authority may, having regard to the nature of the allegations made in the complaint, the provisions of article 105 of the Constitution or, as the case may be, section 16 of the Government of Union Territories Act, 1963, and all the circumstances of the case refer the complaint to the Lokpal, or deal with, or make orders for dealing with, the complaint in such manner as that authority may deem fit.

(3) The complaint shall be in the prescribed form and shall set forth particulars of the misconduct alleged and shall be accompanied by an affidavit in support of the allegation of misconduct and the particu-

lars thereof and a certificate in the prescribed form in respect of the deposit made under sub-section (4) or, if the complainant is unable to make the deposit, an application for exemption from the requirement as to such deposit.

(4) The complainant shall deposit in such manner and with such authority or agency as may be prescribed a sum of rupees one thousand to be available for disposal under section 25:

Provided that the Lokpal or, as the case may be, the appropriate authority may for sufficient cause to be recorded in writing exempt a complainant from the requirement of making the deposit under this sub-section.

(5) Notwithstanding anything contained in sub-sections (1), (2), (3) and (4) any letter written to the Lokpal or, as the case may be, the appropriate authority by a person in any jail or other place of custody or in any asylum or other place for insane persons may, if the Lokpal or, as the case may be, the appropriate authority is satisfied that it is necessary so to do, be treated as a complaint made in accordance with the provisions of this section.

(6) Notwithstanding anything contained in any other enactment, it shall be the duty of a police officer or other person in charge of any jail or other place of custody or of any asylum or other place for insane persons to forward, without opening, any letter addressed to the Lokpal or the appropriate authority by a person imprisoned or detained in such jail, place of custody, asylum or other place, to the Lokpal or the appropriate authority without delay.

Preliminary
scrutiny
of complaints by
Lokpal.

13. (1) If the Lokpal is satisfied, after considering a complaint and after making such verification as he deems appropriate,—

(a) that the complaint is not made within the period of five years specified in sub-section (3) of section 11 and that there is no sufficient cause for entertaining the complaint; or

(b) that he cannot make an inquiry in respect of the complaint by reason of the provisions of sub-section (1) or (2) of section 11; or

(c) that the complaint is frivolous or vexatious or is not made in good faith; or

(d) that there are no sufficient grounds for inquiring into the complaint,

the Lokpal shall dismiss the complaint after recording his reasons therefor and communicate the same to the complainant and to the competent authority concerned.

(2) The procedure for verification in respect of a complaint under sub-section (1) shall be such as the Lokpal deems appropriate in the circumstances of the case and in particular the Lokpal may, if he deems it necessary so to do, call for the comments of the public man concerned.

Procedure
in
respect
of inquiries.

14. (1) If, after the consideration and verification under section 13 in respect of a complaint, the Lokpal process to conduct any inquiry, he—

(a) shall forthwith forward a copy of the complaint to the competent authority concerned;

(b) may make such orders as to the safe custody of documents relevant to the inquiry as he deems fit;

(c) shall, at such time as he considers appropriate, forward a copy of the complaint to the public man concerned and afford him an opportunity to represent his case.

(2) Every such inquiry shall, unless the Lokpal, for reasons to be recorded in writing, determines otherwise, be conducted in camera:

Provided that an inquiry in respect of a complaint against a legislator shall be conducted only in camera.

(3) Save as aforesaid, the procedure for conducting any such inquiry shall be such as the Lokpal considers appropriate in the circumstances of the case.

15. (1) Subject to the provisions of this section, for the purpose of any inquiry (including the verification under section 13), the Lokpal—

Evidence.

(a) may require any public servant or any other person, who in his opinion is able to furnish information or produce documents relevant to such inquiry, to furnish any such information or produce any such document;

5 of 1908.

(b) shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

(i) summoning and enforcing the attendance of any person and examining him on oath;

(ii) requiring the discovery and production of any document;

(iii) receiving evidence on affidavits;

(iv) requisitioning any public record or copy thereof from any court or office;

(v) issuing commissions for the examination of witnesses or documents; and

(vi) such other matters as may be prescribed.

45 of 1860.

(2) A proceeding before the Lokpal shall be deemed to be a judicial proceeding within the meaning of section 193 of the Indian Penal Code.

(3) Subject to the provisions of sub-section (4),—

(a) no obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to Government or any public servant, whether imposed by any enactment or by any provision of law whatever, shall apply to the disclosure of information for the purposes of any inquiry (including the verification under section 13) under this Act; and

(b) the Government or any public servant shall not be entitled, in relation to any such verification or inquiry, to any such privilege in respect of the production of documents or the giving of evidence

as is allowed by any enactment or by any provision of law whatever in legal proceedings.

(4) No person shall be required or authorised by virtue of this Act to furnish any such information or answer any such question or produce any document—

(a) as might prejudice the security, or defence, or international relations, of India (including India's relations with the Government of any other country or with any international organisation), or the investigation or detection of crime; or

(b) as might involve the disclosure of proceedings of the Cabinet of the Union Government or of the Cabinet of the Government of any State or Union territory of the Executive Council under the Delhi Administration Act, 1966, or of any Committee of such Cabinet or Executive Council;

19 of 1966.

and for the purpose of this sub-section, a certificate issued by a Secretary to the Government certifying that any information, answer, or portion of a document, is of the nature specified in clause (a) and clause (b) shall be binding and conclusive:

Provided that the Lokpal may require any information or answer or portion of a document in respect of which a certificate is issued under this sub-section to the effect that it is of the nature specified in clause (a) to be disclosed to him in private for scrutiny and if on such scrutiny the Lokpal is satisfied that such certificate ought not to have been issued, he shall declare the certificate to be of no effect.

Search
and
seizure.

16. (1) If the Lokpal has reason to believe that any documents which, in his opinion, will be useful for, or relevant to, any inquiry under this Act, are secreted in any place, he may authorise any officer subordinate to him, or any officer of an investigating agency referred to in sub-section (2) of section 9, to search for and to seize such documents.

(2) If the Lokpal is satisfied that any document seized under sub-section (1) would be evidence for the purpose of any inquiry under this Act and that it would be necessary to retain the document in his custody, he may so retain the said document till the completion of such inquiry:

Provided that where such document is seized before the commencement of such inquiry, the Lokpal shall return the document before the expiration of a period of one year from the date on which it is seized unless such inquiry has been commenced before such expiration.

Explanation.—For the purposes of this sub-section an inquiry in respect of a complaint—

(a) shall be deemed to have been completed on the date on which the Lokpal closes the case under section 17.

(3) The provisions of the Code of Criminal Procedure, 1973, relating to searches shall, so far as may be, apply to searches under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the words "Lokpal or any officer authorised by him" were substituted.

2 of 1974.

17. (1) If, after inquiry in respect of a complaint the Lokpal is satisfied,—

Reports.

(a) that no allegation made in the complaint has been substantiated either wholly or partly, he shall close the case and intimate the complainant, the public man and the competent authority concerned accordingly;

(b) that all or any of the allegations made in the complaint have or has been substantiated either wholly or partly,

he shall, by report in writing, communicate his findings and recommendations to the competent authority and intimate the complainant and the public man concerned about his having made the report.

(2) The competent authority shall examine the report forwarded to it under clause (b) of sub-section (1) and communicate to the Lokpal, within three months of the date of receipt of the report, the action taken or proposed to be taken on the basis of the report.

(3) If the Lokpal is satisfied with the action taken, or proposed to be taken, on the basis of his report under clause (b) of sub-section (1), he shall close the case and intimate the complainant, the public man and the competent authority concerned accordingly, but where he is not so satisfied and if he considers that the case so deserves he may make a special report upon the case to the President and intimate the complainant, the public man and the competent authority concerned about his having made such report.

(4) The Lokpal shall present annually to the President a consolidated report on the administration of this Act.

(5) As soon as may be after, and in any case not later than ninety days from the receipt of a special report under sub-section (3), or the annual report under sub-section (4), the President shall cause the same together with an explanatory memorandum to be laid before each House of Parliament.

Explanation.—In computing the period of ninety days referred to in this sub-section, any period during which Parliament or, as the case may be, either House of Parliament, is not in session shall be excluded.

MISCELLANEOUS

18. The salaries, allowances and pensions payable to, or in respect of, the Lokpal and the Special Lokpals shall be expenditure charged on the Consolidated Fund of India.

Salary, allowances of Lokpal, etc.

19. (1) Any information obtained by the Lokpal, or by any officer, employee, agency or person referred to in section 9, in the course of, or for the purpose of, any verification or inquiry under this Act, and any evidence recorded or collected in connection therewith shall be treated as confidential and, notwithstanding anything contained in the India Evidence Act, 1872, no court shall be entitled to compel the Lokpal, or any such officer, employee, agency or person, to give evidence relating to such information or to produce the evidence so recorded or collected.

Secrecy of information.

(2) Nothing in sub-section (1) shall apply to the disclosure of the information or evidence referred to therein--

(a) for the purposes of this Act or for the purposes of any action or proceedings to be taken on any report under section 17; or

(b) for the purposes of any proceedings, for an offence of giving or fabricating false evidence, under the Indian Penal Code; 45 of 1860. or

(c) for such other purposes as may be prescribed.

Penalty for disclosure or publication of information in respect of complaints against legislators.

20. (1) No complaint against a Legislator or any proceedings (whether by way of verification, inquiry or otherwise) in respect of such complaint or any information in respect of such complaint or proceedings (including any evidence furnished, collected or recorded in relation to such complaint or in the course of or for the purpose of such proceedings) shall be disclosed or published by any person--

(a) where such complaint has been referred to the Lokpal under sub-section (2) of section 12, at any time before the dismissal of such complaint under sub-section (1) of section 13, or if the Lokpal conducts an inquiry into such complaint under section 14 at any time before he closes the case under clause (a) of sub-section (1) of section 17 or, as the case may be, before he makes a report in respect of the case under clause (b) of that subsection;

(b) in any other case, before the competent authority concerned discloses or announces in the prescribed manner the findings in respect of allegations made in such complaint;

Provided that nothing in this sub-section shall apply--

(i) to any disclosure for the purposes of this Act; or

(ii) to any disclosure or publication with respect to proceedings for any offence under this Act or any other law; or

(iii) to any disclosure or publication for such other purposes as may be approved by the competent authority concerned.

(2) Whoever contravenes the provisions of sub-section (1) shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

(3) The provisions of this section shall have effect notwithstanding anything in any other section of this Act or in any other enactment.

Intentional insult or interruption to, or bringing into disrepute Lokpal.

21. (1) Whoever intentionally offers any insult, or causes any interruption, to the Lokpal while the Lokpal is making any verification conducting any inquiry under this Act, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

(2) Whoever, by words spoken or intended to be read, makes or publishes any statement, or does any other act, which is calculated to bring the Lokpal into disrepute, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

2 of 1974. (3) The provisions of sub-section (2) of section 199 of the Code of Criminal Procedure, 1973, shall apply in relation to an offence under sub-section (1) or sub-section (2) as they apply in relation to an offence referred to in sub-section (2) of the said section 199, subject to the modification that no complaint in respect of such offence shall be made by the Public Prosecutor except with the previous sanction of the Lokpal.

2 of 1974. 12. (1) If, at any stage of a proceeding before the Lokpal, it appears to the Lokpal that any person appearing in such proceedings had knowingly or wilfully given false evidence or had fabricated false evidence with the intention that such evidence should be used in such proceeding the Lokpal may, if satisfied that it is necessary and expedient in the interests of justice that the person should be tried summarily for giving or fabricating false evidence, as the case may be, after giving the offender a reasonable opportunity of showing cause why he should not be punished for such offence, try such offender summarily, so far as may be, in accordance with the procedure prescribed for summary trials under the Code of Criminal Procedure, 1973, and sentence him to imprisonment for a term which may extend to three months or to fine which may extend to five hundred rupees, or to both.

Power of Lokpal to try certain offences summarily.

45 of 1860 (2) When any such offence as is described in section 175, section 178, section 179 or section 180 of the Indian Penal Code is committed in the view or presence of the Lokpal, the Lokpal may cause the offender to be detained in custody and may, at any time on the same day, take cognizance of the offence and, after giving the offender a reasonable opportunity of showing cause why he should not be punished under this section, sentence the offender to simple imprisonment for a term which may extend to one month, or to fine which may extend to five hundred rupees or to both.

(3) In every case tried under this section, the Lokpal shall record the facts constituting the offence with the statement (if any) made by the offender as well as the finding and the sentence.

2 of 1974. (4) Any person convicted on a trial held under this section may appeal to the High Court and the provisions of Chapter XXIX of the Code of Criminal Procedure, 1973, shall so far as may be, apply to appeals under this section and the High Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.

Explanation.—For the purposes of this sub-section “High Court” means the High Court within the jurisdiction of which the person convicted ordinarily resides or carried on business or personally works for gain or the High Court within whose jurisdiction the order of conviction has been passed.

2 of 1974. (5) The provisions of this section shall have effect notwithstanding anything contained in the Code of Criminal Procedure, 1973.

Action in
case of
false com-
plaint.

23. (1) Every person who wilfully or maliciously makes any complaint which he knows or has reason to believe to be false under this Act shall be punished with imprisonment for a term which may extend to one year and shall also be liable to fine which may extend to three thousand rupees.

(2) No Court, except a Court of Session, shall take cognizance of an offence under sub-section (1).

(3) No such Court shall take cognizance of such offence except on a complaint in writing made by the Public Prosecutor at the direction of the Lokpal and the Court of Session may take cognizance of the offence on such complaint without the case being committed to it.

(4) The Court of Session, on conviction of the person making false complaint, may award, out of the amount of fine, to the public man against whom such false complaint has been made such amount of compensation as it thinks fit.

(5) The provisions of this section shall have effect notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973.

2 of 1974.

Confer-
ment of
additional
functions on
Lokpal.

24. (1) The President may, by notification in the Official Gazette and after consultation with the Lokpal, confer on the Lokpal such additional functions in relation to the eradication of corruption as may be specified in the notification.

(2) The President may, by order in writing and subject to such conditions or limitations as may be specified in the order, require the Lokpal to inquire into any allegations of misconduct specified in the order in respect of a public man and, notwithstanding anything contained in this Act, the Lokpal shall comply with such order.

(3) When the Lokpal is to make any inquiry under sub-section (1) or sub-section (2), the Lokpal shall exercise the same powers and discharge the same functions as he would in the case of any inquiry made on a complaint under this Act and the provisions of this Act shall apply accordingly.

Disposal
of
deposit.

25. The sum deposited by a complaint under section 12 shall,—

(a) in a case where the complaint is dismissed under clause (c) of sub-section (1) of section 13 stand forfeited to the Central Government;

(b) if the Lokpal, for reasons to be recorded in writing, so directs, be utilised for compensating the public man complained against; and

(c) in any other case, be refunded to the complainant.

26. If the Lokpal is satisfied—

(a) that all or any of the allegations made in a complaint have or has been substantiated either wholly or partly; and

(b) that having regard to the expenses incurred by the complainant in relation to the proceedings in respect of such complaint and all other relevant circumstances of the case the complainant deserves to be compensated or rewarded,

The Lokpal shall determine the amount which shall be paid to the complainant by way of such compensation or reward and the Central Government shall pay the amount or amounts so determined to the complainant.

Compensation or reward or both payable in certain cases to complainant.

27. (1) No suit, prosecution, or other legal proceeding, shall lie against the Lokpal, or against any officer, employee, agency or person referred to in section 9, in respect of anything which is in good faith done, or intended to be done, under this Act.

Protection.

(2) Save as otherwise provided in section 22, no proceedings or decision of the Lokpal shall be liable to be challenged, reviewed, quashed, or called in question in any court.

28. The Lokpal may, by general or special order in writing, and subject to such conditions and limitations as may be specified therein, direct that any powers conferred or duties imposed on him by or under this Act, (except the powers under the proviso to sub-section (3) of section 11, and the proviso to sub-section (4) of section 12, the power to dismiss a complaint under sub-section (1) of section 13, the powers to close cases and make reports under section 17 and the powers under section 22) may also be exercised or discharged by such of the officers, employees or agencies referred to in sub-section (1) or sub-section (2) of section 9, as may be specified in the order.

Power to delegate.

29. (1) The President may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing provisions, such rules may provide for—

(a) the authorities required to be prescribed under sub-section (2) of section 2;

(b) the officers and employees who may be appointed under sub-section (1) of section 9;

(c) the terms and conditions of service of the officers, employees, agencies and person referred to in sub-section (3) of section 9;

(d) the form in which complaints may be made under section 12 and the fees, if any, which may be charged in respect thereof;

(e) the manner in which and the authorities or agencies with whom deposits shall be made under sub-section (4) of section 12 and the form in which certificates shall be furnished in respect of such deposits under sub-section (3) of section 12;

(f) the matters referred to in sub-clause (vi) of clause (b) of sub-section (1) of section 15;

(g) any other matter which is to be or may be prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Saving.

30. Nothing contained in this Act shall be construed as affecting the constitution of, or the continuance of functioning or exercise of powers by, any Commission of Inquiry appointed under the Commissions of Enquiry Act, 1952, before the commencement of this Act and no complaint shall be made under this Act in respect of any matter referred for inquiry to such Commission before such commencement.

**Conse-
quential
amend-
ment
of Act
60 of
1952.**

31. In section 3 of the Commissions of Inquiry Act, 1952, in sub-section (1), for the words, "The appropriate Government may", the words, brackets and figures "Subject to the provisions of sub-section (2) of section 10 of the Lokpal Act, 1983, the appropriate Government may" shall be substituted.

THE SCHEDULE

[See Section 4(2)]

I, _____, having been appointed Lokpal,
do swear in the name of God
_____ solemnly affirm, _____, that I will bear true faith and alle-
giance to the Constitution of India as by law established, that I will
duly and faithfully and to the best of my ability, knowledge and judge-
ment perform the duties of my office without fear or favour, affection
or ill-will.

STATEMENT OF OBJECTS AND REASONS

Corruption has become rampant today. It has corroded the texture of our body politic. It has already eaten into the vitals of our social fabric. All pervading corruptions, as existing now, if not hounded out, would spell disaster in our national life.

The fight against all kinds of corruption has, therefore, become a task of great urgency.

The Administrative Reforms Committee went in depth into this pernicious malady of our social life and submitted its recommendations as late as in 1966.

The Lokpal and Lokayukta Bill incorporating some of the recommendations of the ARC was introduced in 1968. The Bill, however, lapsed with the dissolution of the Fourth Lok Sabha. It was reintroduced again in the Fifth Lok Sabha in 1971. It again lapsed with the dissolution of the Fifth Lok Sabha. The Lokpal Bill was introduced in Lok Sabha on July 8, 1977. The Bill was referred to a Joint Committee which submitted its report on July 20, 1978.

The House could not take up the consideration of the report since the Sixth Lok Sabha was dissolved in 1979.

Thus Parliament could not forge any instrument to fight the evils of corruption.

To forge an effective legislative weapon to combat corruption at high places including public servants to begin with, has become imperatively essential in today's context.

Hence this Bill.

NEW DELHI;

CHITTA BASU

June 28, 1983.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE
CONSTITUTION OF INDIA

[Copy of letter No. 3/5/83-AVD. IV, dated 6 August 1983 from Shri P. C. Sethi, Minister of Home Affairs to the Secretary, Lok Sabha.]

The President, having been informed of the subject matter of the Lokpal Bill, 1983, recommends under article 117(1) of the Constitution for introduction of the Bill and under article 117(3) of the Constitution for the consideration of the Bill in the Lok Sabha.

FINANCIAL MEMORANDUM

Clause 4(1) and clause 8(1) of the Bill provide respectively for the appointment of the Lokpal and Special Lokpals. Clause 6(3) provides for the salary payable to Lokpal. Clause 6(4) lays down that the Lokpal shall be entitled without payment of rent to the use of an official residence. Clause 6(5) of the Bill envisages that the allowances and pension payable to, and other conditions of service of, the Lokpal shall be such as may be prescribed by rules having regard to the allowances and pension payable to, and other conditions of service of, the Chief Justice of India. By virtue of clause 8(3), the provisions of clause 6(3), (4) and (5) apply in relation to the Special Lokpals also.

2. Sub-clause (1) of clause 9 provides that the Lokpal shall have the Secretary and such other officers and employees as may be prescribed by rules to assist him in the discharge of his functions. Sub-clause (2) of clause 9 empowers the Lokpal to secure, for the purposes of dealing with any complaints or any classes of complaints, the services of any officer or employees or investigating agency of the Central Government or a State-Government or the services of any other person or agency. Sub-clause (3) of clause 9 provides that the terms and conditions of service of the officers and employees of the Lokpal and of the officers, employees, agencies and persons referred to in sub-clause (2) of that clause, shall be such as may be prescribed by rules in consultation with the Lokpal. Clause 18 provides that salary, allowances, etc. of the Lokpal and the Special Lokpals shall be expenditure charged on the Consolidated Fund of India. Clause 26 provides for payment of such compensation or reward by the Central Government to the complainant as the Lokpal may determine in certain cases.

3. It is not possible to visualise at this stage whether any need will arise for the appointment of one or more Special Lokpals. Further, the salaries and other conditions of service of the staff of the Lokpal are to be prescribed by rules after consultation with the Lokpal. It is, therefore, not possible to give precise details of the expenditure involved. It is, however, estimated that the Bill, when enacted, will involve a non-recurring expenditure of Rs. 2 lakhs and a recurring expenditure of Rs. 20 lakhs a year from the Consolidated Fund of India. In case it becomes necessary to construct a building to house the establishment of the Lokpal additional expenditure, of a non-recurring nature, of the order of Rs. 25 lakhs will also be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 29 of the Bill gives power to the President i.e. the Central Government to make rules for carrying out the purposes of the Bill. The matters in respect of which rules may be made *inter alia* relate to the authorities to be prescribed under sub-section (2) of section 2, Officers and employees who may be appointed under sub-section (1) of section 9 etc. The delegation of legislative power is, therefore, of a normal character.

BILL No. 108 OF 1983

A Bill further to amend the Central Excises and Salt Act, 1944

BE it enacted by Parliament in the Thirty-fourth Year of the Republic of India as follows:—

1. This Act may be called the Central Excises and Salt (Amendment) Act, 1983.

Short
title.

1 of 1944.

2. After section 11C of the Central Excises and Salt Act, 1944 (hereinafter referred to as the principal Act), the following new sections shall be inserted, namely:—

Insertion
of new
sections
11D, 11E,
etc.

“11D. Whenever on account of stay or injunction order of the Court or otherwise, the payment of any amount as duty of excise or purported to be as duty of excise is delayed beyond 90 days of the date on which the same was payable under this Act or the rules made thereunder, the same will be payable with eighteen per cent. interest per annum.

Duty
payable
with
interest
in case
of delay
due to
injunction
order,
etc.

11E. Whenever any duty or amount recovered becomes refundable by the Government, the same shall be refunded by the Government to the ultimate buyers and where it is not reasonably practicable to identify the buyers, the same will be invested in such fund for the benefit of the consumers as the Government may,

Refund
of duty
to consu-
mers or
invest-
ment in

the
Fund
for
benefit of
consumers.

by notification published in the Gazette of India, set up and thereupon the amount shall be applied to such purpose as the Court may direct.

Amount
of duty
to be
invested
in the
Fund
when
declared
not
payable.

11F. Whenever any amount collected by the manufacturer as excise duty from his buyers is declared as not payable to the Government as excise duty, the manufacturer shall refund the same to his buyers, who shall in turn refund the same to their buyers/ultimate consumers of the goods in question and whenever it is not reasonable practicable to identify the ultimate consumers with reasonably certainty, the amount shall be invested in the Fund referred to in section 11E.”.

Insertion
of new
section
35R.

3. After section 35Q of the principal Act, the following section shall be inserted, namely:—

Bar of
jurisdic-
tion of
Courts.

“35R. (1) No Court including the High Court shall have jurisdiction with respect to any of the matter falling within the jurisdiction of the Appellate Tribunal and the provisions of this Act shall have effect subject to the provisions of this section.

(2) Notwithstanding anything contained in any other law for the time being in force, no court including the High Court shall have jurisdiction to entertain, hear and decide any suit, application, appeal or petition questioning the validity of any order made or purported to have been made under this Act or the recovery of any amount payable or deemed to be payable in accordance with any order passed or purported to have been passed under this Act.

(3) Nothing in this section shall apply to the jurisdiction of the Supreme Court under article 136 of the Constitution of India or under sections 35H, 35I, 35K, 35L and 35M of this Act.”

STATEMENT OF OBJECTS AND REASONS

Article 323B of the Constitution of India confers upon the appropriate legislatures powers to make law providing for the adjudication or trial by tribunals of any disputes, complaints or offences with respect to any of the matters specified in clause (2) of that article; levy, assessment, collection and enforcement of any tax is one of these matters. Clause (3) (d) of the said article 323B provides that the appropriate legislature may by law exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under article 136, with respect to all or any of the matters falling within the jurisdiction of the tribunals.

The Finance (No. 2) Act of 1980 has amended the Central Excises and Salt Act, 1944, as directed in Part II of the Fifth Schedule to that Act, so as to provide for the hearing of appeals/reviews in excise matters by the Customs, Excise and Gold (Control) Appellate Tribunal established by an amendment of the Customs Act, 1962, as directed in Part I of the said Fifth Schedule. However, except to the extent as provided in section 11B(5), there is no provision contained therein to exclude the jurisdiction of Courts in excise matters. As a result, large number of cases continue to be field in Courts. On the one hand this creates parallel jurisdiction of Tribunals, as jurisdiction is not exclusive, and parallel litigations in Tribunals as well as Courts. When the law provides for the establishment of special Tribunals, it would be inequitable to continue the situation where parties can also resort to Courts. This situation creates the possibility where conflicting judgments are given by Tribunals on the one hand and Courts on the other hand. Further, huge amounts of revenue happens to be bogged down on account of interim orders obtained from Courts. The Bill, therefore, seeks to give full effect to the powers of Parliament as conferred by article 323B of the Constitution by excluding jurisdiction of all courts including the High Courts from excise matters.

2. It even happens that on account of interim injunctions and stay orders issued by courts, the payment of excise duty is withheld by the parties concerned until the party loses ultimately in courts. It ultimately the amount becomes payable, the party will have by that time applied the amount to their business with the result even if the amount is ultimately held to be payable, the party gains interest/profits on the said amount while the revenue stands to lose to that extent. The Bill therefore seeks to provide that late payments of excise duty, whether under cover of a stay order/injunction order issued by courts or otherwise, shall be payable with certain interest where the delay exceeds 90 days from the usual date of payment.

3. When collection of any amount of duty is declared invalid, the amounts may become refundable to the manufacturer. Some Courts have expressed the view that the amounts should not be refunded to the manufacturers in such eventualities, but should be either refunded to the consumers or suitably invested in the interests of consumers.

In somewhat similar situation, the Supreme Court has directed to adopt a scheme by which the amount illegally collected is ultimately repaid to the small consumers or is utilised for their benefit (See *Newab Ganj Sugar Mills Co. Ltd. V. Union of India & Others*, A.I.R. 1976 S.C. p. 1152 and *Shiv Shankar Dal Mills. V. State of Haryana*, A.I.R. 1976 S.C. p. 1037).

Similar situation can arise when amount collected from the consumers is withheld by the assessee from payment to the Government under courts' orders and upon succeeding in the petition, the manufacturer retains the amount to himself though the same was collected from the consumers without authority of law.

Both these situations create an unjust enrichment of the manufacturer without any benefit to the consumers of the revenue.

The Bill, therefore, seeks to provide that in such eventualities the amounts in question shall be refunded to the consumer or be invested suitably in the interests of consumers.

NEW DELHI;

NAVIN RAVANI

April 4, 1983.

PRESIDENT'S RECOMMENDATION UNDER ARTICLES 117 AND 274 OF THE CONSTITUTION OF INDIA

[Copy of letter No. F. 4/5/83-CX I, dated 30 September 1983 from Shri Pranab Kumar Mukherjee, Minister of Finance to the Secretary, Lok Sabha.]

The President, having been informed of the subject matter of the Bill further to amend the Central Excises and Salt Act, 1944, by Shri Navin Ravani, Member, Lok Sabha, recommends under clause (1) of article 117 and clause (1) of article 274 of the Constitution the introduction of the Bill in Lok Sabha.